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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE, Plaintiff and Respondent, v. PIERRE TONY REDD, Defendant and Appellant.	B257939 (Los Angeles County Super. Ct. No. TA132783)

APPEAL from a judgment of the Superior Court of Los Angeles County, Eleanor J. Hunter, Judge. Affirmed.

Gloria C. Cohen, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Scott A. Taryle and Russell A. Lehman, Deputy Attorneys General, for Plaintiff and Respondent.

Appellant Pierre Tony Redd appeals from the judgment entered following his convictions by jury on two counts of attempted willful, deliberate, and premeditated murder (counts 2 & 3), each with a finding he personally used, and personally and intentionally discharged, a firearm, personally and intentionally discharged a firearm causing great bodily injury, and personally inflicted great bodily injury, and following his convictions by jury on count 4 – possession of a firearm by a felon, and on count 5 – possession of ammunition, with court findings appellant suffered a prior felony conviction, a prior serious felony conviction, and four prior felony convictions for which he served separate prison terms. (Pen. Code, §§ 664, 667, subds. (a)(1) & (d), 667.5, subd. (b), 187, subd. (a), 12022.53, subds. (b)-(d), 12022.7, subd. (a), 29800, subd. (a)(1) & 30305, subd. (a)(1).) The court sentenced appellant to prison on counts 2 and 3 to two consecutive terms of life with the possibility of parole (after 14 years), plus 25 years to life, plus nine years, with concurrent terms on counts 4 and 5. We affirm.

FACTUAL SUMMARY

Appellant assigns as error the trial court's failure to give to the jury a written CALCRIM No. 603 instruction on attempted voluntary manslaughter as a lesser included offense of count 2, after the trial court orally recited that instruction to the jury during its final charge. A detailed recitation of the facts of the underlying offenses is therefore unnecessary because there is no dispute appellant unlawfully attempted to kill D.B. (the victim in count 2) by shooting her and no dispute appellant attempted to murder Shanta Stanford (the victim in count 3) by shooting him.

Accordingly, it is sufficient to note the evidence established that on the morning of November 22, 2013, when D.B. was 16 years old, D.B. and Stanford were drinking in his apartment on South Figueroa.[1] D.B. learned Alita Davis had given birth to appellant's baby. Stanford lived in apartment No. 7, Davis lived in apartment No. 5, and the two apartments were very close. With Davis's permission, D.B. entered Davis's apartment to see the baby.

Stanford heard arguing. Appellant, in Davis's apartment, said, "What the fuck you doing in here?" He also said, "I don't want you to see my son," and "Get the fuck up out of here." D.B. reentered Stanford's apartment. D.B., inside Stanford's apartment, said to appellant, "Fuck you" and similar things. D.B. and appellant were yelling at each other from inside the apartments of Stanford and Davis, respectively.

D.B. and appellant continued arguing, then appellant said, "Stop talking that shit. Why don't you come outside?" Appellant also said he would "come outside here, beat [D.B.'s] ass." D.B. yelled, "I'm not scared of you. I'll get my homeboys to fight you." Stanford understood that to mean D.B. would call gang members. According to Stanford, D.B. was a gang member. Stanford tried to calm D.B. and indicated to her that she should let appellant calm down. Stanford was later in his bathroom when he heard a gunshot.

On November 22, 2013, Desi Perez lived in apartment No. 16 on the ground floor of the apartment complex. Around noon that day, Perez heard a male and female arguing loudly and calling each other names in a location towards the end of the complex. Perez looked out his apartment door and saw D.B. standing outside the door of Stanford's

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[1] In appellant's opening brief, he asserts "bad blood" existed between D.B. and appellant as a result of his "firing" D.B. in June 2013, a fact appellant argues is relevant to show his November 22, 2013 shooting of D.B. was the result of sudden quarrel. We note as follows. In June 2013, when D.B. was 16 years old, she was a prostitute working for appellant, a pimp. During that month, appellant terminated their relationship because she was not making money for him. He told her to remove the clothes he had bought her, and she was found naked and crying near Vernon and Figueroa. Stanford testified that between June 2013 and November 22, 2013, appellant and D.B. might have seen each other, but the two did not speak to one another.

apartment. Appellant was standing about 10 or 15 feet from D.B. Appellant (a felon) pulled out a small revolver, said, "Fuck you, bitch," pointed the revolver in D.B.'s direction, and shot her.

Appellant shot D.B. twice in her stomach. Stanford ran out and saw D.B. lying on the ground and holding her stomach in front of his apartment. Appellant later exited Davis's apartment and walked past Stanford. Stanford asked appellant, "What happened? What did you do?" Appellant asked Stanford, "[Do you] want some too?" Appellant, about 15 feet from Stanford, pulled out a gun and Stanford ran. Appellant fired twice what appeared to be a .38-special revolver. The first shot missed Stanford, but the second hit him near his right upper thigh.

ISSUE

Appellant claims the trial court erroneously failed to give a written instruction on attempted voluntary manslaughter as a lesser included offense of the attempted premeditated murder of D.B. (count 2).

DISCUSSION

The Court Did Not Prejudicially Err by Failing to Give a Written CALCRIM No. 603 Instruction as to the Attempted Premeditated Murder of D.B. (Count 2).

a. *Pertinent Facts.*

We set forth below facts concerning proceedings pertinent to our resolution of appellant's claim, including facts pertaining to the allegations in counts 2 and 3, discussions concerning jury instructions, instructions given, appellant's jury argument, jury deliberations, and the jury's verdicts.

The amended information alleged, inter alia, that appellant committed attempted willful, deliberate, and premeditated murder against D.B. (count 2) and Stanford (count 3). On July 7, 2014, during discussions about jury instructions, appellant asked the court to "give [CALCRIM No.] 603, attempted voluntary manslaughter, heat of passion, as lessers to counts 2 and 3, based on the argument and the confrontation by [Stanford]." The court rejected appellant's request as it related to count 3. However, the

court later stated its recollection of the evidence as to count 2,[2] then indicated the court would give the instruction as to that count "out of an abundance of caution."

Following the presentation of evidence, the court, using CALCRIM No. 200, told the jury, inter alia, the court would give the jury a copy of the instructions to use in the jury room. However, although, as to count 2, the court gave CALCRIM No. 603 orally,[3]

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[2] The court stated, "[t]he way I recall the testimony is that [D.B.] walked into the apartment to see the baby, and the defendant and [D.B.] both got into a verbal back and forth, lots of swearing apparently, and the defendant exited the place and called the . . . victim out. But it was right on the heels of them being involved in this argument."

[3] CALCRIM No. 603, as orally recited by the court, stated, "In count 2, wherein [D.B.] is the alleged victim, an attempted killing that would otherwise be attempted murder in count 2 is reduced to attempted voluntary manslaughter if the defendant attempted to kill someone because of a sudden quarrel or in heat of passion. The defendant attempted to kill someone because of a sudden quarrel or in heat of passion if: [¶] No. 1, the defendant took at least one direct but ineffective step toward killing a person; [¶] No. 2, the defendant intended to kill that person; [¶] No. 3, the defendant . . . [¶] . . . [¶] attempted the killing because he was provoked; [¶] No. 4, the provocation would have caused a person of average disposition to act rashly and without due deliberation, that is, from passion rather than judgment; [¶] and, No. 5, the attempted killing was a rash act done under the influence of intense emotion that obscured the defendant's reason or judgment. [¶] Heat of passion does not require anger, rage, or any specific emotion. It can be any violent or intense emotion that causes a person to act without due deliberation and reflection. [¶] In order for a sudden quarrel or heat of passion to reduce an attempted murder to attempted voluntary manslaughter, the defendant must have acted under the direct and immediate influence of provocation as I have defined it. While no specific type of provocation is required, slight or remote provocation is not enough. Sufficient provocation may occur over a short or long period of time. It is not enough the defendant was simply provoked. The defendant is not allowed to set up his own standard of conduct. You must decide if the defendant was provoked and whether the provocation was sufficient. [¶] In deciding whether the provocation was sufficient, consider whether a person of average disposition, in the same situation and knowing the same facts, would have reacted from passion rather than judgment. [¶] If enough time passed between the provocation and the attempted killing for a person of average disposition to cool off and regain his clear reasoning and judgment, then the attempted murder is not reduced to attempted voluntary manslaughter on that basis. [¶] The People have the burden of proving beyond a reasonable doubt that the defendant attempted to kill someone and was not acting as a result of a sudden quarrel or in heat of passion. If the People have not met this burden, you must find the defendant not guilty of attempted murder."

the court did not include a copy of that instruction in the written instructions delivered to the jury. The court also instructed on attempted murder. The court further, using CALCRIM No. 601, instructed the jury that the People had to prove beyond a reasonable doubt the premeditation and deliberation allegations pertaining to count 2.

Later, appellant alluded to attempted voluntary manslaughter during his closing argument to the jury. In particular, appellant's counsel stated, "[w]ell, what have we heard about here? Sudden quarreling, people yelling at each other, and then shots ringing out." Appellant's counsel subsequently argued to the jury, "[if you said] there was provocation, you would find him not guilty of attempted murder and, say, it's attempted voluntary manslaughter."[4]

At 3:35 p.m. on July 7, 2014, jury deliberations commenced. The court later ordered deliberations continued to July 8, 2014. At 9:50 a.m. on July 8, 2014, deliberations resumed. At 10:40 a.m., the jury sent a note to the court.[5] At 11:05 a.m., the jury announced it had reached a verdict and did not need a response to the note. Later, the trial court, outside the presence of the jury, stated, "the jury let my bailiff know that they had come to their decision; they had figured out the answers themselves." The jury convicted appellant as previously indicated.

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[4] Following closing arguments, the trial court gave the jury CALCRIM No. 3517, which indicated, inter alia, that attempted voluntary manslaughter was a lesser crime of attempted murder charged in count 2, and the jury could convict appellant of the lesser crime if the jury acquitted him of the greater. The court also told the jury, concerning the instructions, "you're going to be having all of these in written form."

[5] The note stated, "1) May we get a better, more thorough of [*sic*] 664/192(a) and 664/187(a)? [¶] 2) What will happen to a charge if we can't agree on it? Will that charge be automatically considered not guilty?" The court, using CALCRIM No. 3550, previously had instructed the jury to continue deliberating while waiting for the trial court's answer to any jury note.

b. *Analysis.*

Appellant claims the trial court reversibly erred by failing to give a written instruction, CALCRIM No. 603, on attempted voluntary manslaughter as a lesser included offense of the attempted premeditated murder of D.B. (count 2). For the reasons discussed below, we reject the claim.

(1) *No Constitutional Error Occurred.*

A premise of appellant's claim is that constitutional error occurred. For the reasons discussed below, we conclude no such error occurred. In *People v. Trinh* (2014) 59 Cal.4th 216, the trial court orally read CALJIC Nos. 2.60 and 2.61 to the jury but inadvertently omitted them from the written instructions given to the jury. Our Supreme Court observed, "Trinh contends this omission violated his privilege against self-incrimination, his right to due process, assorted other state and federal constitutional rights, and his state statutory rights. (U.S. Const., 5th, 6th, 8th & 14th Amends.; Cal. Const., art. I, §§ 1, 7, 15–17; Pen. Code, § 1093, subd. (f).)" (*Trinh*, at p. 234.) However, *Trinh* stated, "[w]e conclude no constitutional error occurred." (*Ibid*.)

Trinh later observed, "Trinh sought the giving of CALJIC Nos. 2.60 and 2.61, as was his right, and the trial court agreed and delivered the requested instructions. The subsequent omission of these instructions from the written packet provided the jury does not vitiate the oral instructions. Neither the United States Supreme Court nor we have ever held that oral jury instructions are ineffectual unless augmented by written copies of the same instructions; to the contrary, we have established that neither the state nor the federal Constitution guarantees a criminal defendant the delivery of written instructions in addition to oral ones. [Citations.]" (*Trinh, supra,* 59 Cal.4th at p. 234.)[6] As mentioned, *Trinh* stands for the proposition no constitutional error occurred in that case. (*Ibid.*)

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[6] Of course, the provision of written instructions is generally beneficial and to be encouraged. (*Trinh, supra,* 59 Cal.4th at p. 234.)

We hold the trial court's failure to give to the jury a written CALCRIM No. 603 instruction in the present case was neither federal nor state constitutional error.

(2) *The Trial Court Committed Statutory Error.*

Although no constitutional instructional error occurred, the omission of CALCRIM No. 603 from the written instructions given to the jury was, as discussed below, statutory error, i.e., a violation of Penal Code section 1093, subdivision (f).

Penal Code section 1093, subdivision (f), states, in relevant part, "[t]he jury having been impaneled and sworn, unless waived, the trial shall proceed in the following order, unless otherwise directed by the court: [¶] . . . [¶] (f) . . . Upon the jury retiring for deliberation, the court . . . may, at its discretion, provide the jury with a copy of the written instructions given. However, if the jury requests the court to supply a copy of the written instructions, the court shall supply the jury with a copy." We note the subdivision, by its terms, requires the court to supply a copy of the written instruction "if the jury requests," and the subdivision does not expressly state anything about a defendant's request for a written instruction.

Indeed, *People v. Ochoa* (2001) 26 Cal.4th 398 (*Ochoa*), suggested Penal Code section 1093, subdivision (f) requires an express request from the jury. In *Ochoa*, the trial court orally read to the jury CALJIC Nos. 2.02 and 2.03, but inadvertently failed to include them in the written set of instructions given to the jury. The defendant argued the failure was error. (*Ochoa*, at pp. 446-447.) *Ochoa* concluded no error occurred (*id.* at p. 447) and later stated, "the statutory right depends on an express request. ([Pen. Code,] § 1093, subd. (f).)" (*Ochoa*, at p. 447.) In *People v. Seaton* (2001) 26 Cal.4th 598 (*Seaton*), the defendant, but not the jury, requested written instructions, the trial court refused the request, and the defendant claimed the refusal was an abuse of discretion. *Seaton* rejected the claim and later noted, "Whether to give written instructions in the absence of a request from the jury is a matter entrusted to the trial court's discretion. ([Pen. Code,] § 1093, subd. (f).)" (*Seaton*, at p. 673.)

However, *Trinh* teaches that when a trial court orally gives an instruction to the jury, a defendant has a statutory right—under Penal Code section 1093, subdivision (f)—to have the trial court give to the jury a written copy of the instruction, at least (1) where the parties do not agree whether a "formal request" was made and (2) in certain circumstances discussed below.

Trinh stated, "While the omission of a written instruction is not an error of constitutional dimension, the Legislature has seen fit to ensure as a statutory matter that defendants and juries have the benefit of written instructions upon request. ([Pen. Code,] § 1093, subd. (f); *People v. Ochoa*, *supra*, 26 Cal.4th at p. 447.)" (*Trinh, supra*, 59 Cal.4th at p. 235.)

Trinh later stated, "[t]he People and Trinh disagree over whether *any* formal request was made, but the record reflects counsel and the court intended the jury to receive a full set of instructions, and the omission of CALJIC Nos. 2.60 and 2.61 arose not because Trinh failed specifically to request their inclusion but because the trial court inadvertently omitted them when compiling the written jury instructions. However unintentional, this omission deprived Trinh of his statutory right to have a written copy of these two instructions delivered to the jury." (*Trinh, supra,* 59 Cal.4th at p. 235, italics added.)

In the present case, there is no dispute counsel for the parties, and the court, intended the jury to receive a full set of instructions, and the omission of CALCRIM No. 603 arose not because appellant failed specifically to request its inclusion but because the trial court inadvertently omitted that instruction when compiling the written jury instructions. Respondent concedes the trial court's failure to give a written CALCRIM No. 603 deprived appellant of his statutory right. We accept the concession. We hold the trial court's omission of CALCRIM No. 603 from the written instructions given to the jury was statutory error, i.e., a violation of appellant's rights under Penal Code section 1093, subdivision (f).

(3) *No Prejudicial Statutory Error Occurred.*

However, our analysis does not end with the holding that statutory error occurred, because "[a] defendant seeking reversal of a judgment based upon statutory error, . . . must demonstrate prejudice under [*People v. Watson* (1956) 46 Cal.2d 818, 836 (*Watson*)]." (*People v. Rundle* (2008) 43 Cal.4th 76, 134.) Accordingly, *Trinh* relied on the *Watson* standard to evaluate whether the trial court's statutory error in *Trinh* was prejudicial. (*Trinh*, *supra,* 59 Cal.4th at p. 235.)

Watson articulates the test employed to determine whether state law error amounts to a "miscarriage of justice" (Cal. Const., art. VI, § 13) and thus warrants reversal of a judgment. (See *People v. Moore* (2011) 51 Cal.4th 1104, 1130.) Moreover, "it appears that the test generally applicable may be stated as follows: That a 'miscarriage of justice' should be declared only when the court, 'after an examination of the *entire cause*, including *the evidence*,' is of the 'opinion' that it is reasonably probable that a result more favorable to the appealing party would have been reached in the absence of the error." (*Watson*, *supra,* 46 Cal.2d at p. 836, italics added.)

"Appellate review under *Watson* . . . focuses not on what a reasonable jury *could* do, but what such a jury is *likely* to have done in the absence of the error under consideration. In making that evaluation, an appellate court may consider, among other things, whether the evidence supporting the existing judgment is so *relatively* strong, and the evidence supporting a different outcome is so *comparatively* weak, that there is no reasonable probability the error of which the defendant complains affected the result." (*People v. Breverman* (1998) 19 Cal.4th 142, 177.) In other words, when evaluating whether prejudice arose from the trial court's failure to give a written CALCRIM No. 603 instruction, we may consider not only the oral instruction given but the entire record.

"In determining whether there was prejudice [under the *Watson* standard], the entire record should be examined, including the facts and the instructions, the arguments of counsel, any communications from the jury during deliberations, and the entire verdict." (*People v. Guiton* (1993) 4 Cal.4th 1116, 1130 (*Guiton*).)

Considering " 'the evidence,' " (*Watson, supra,* 46 Cal.2d at p. 836), we note at the outset appellant's claim is the trial court erroneously failed to give a written CALCRIM No. 603 instruction on attempted voluntary manslaughter as a lesser included offense of count 2. In other words, there is no dispute appellant unlawfully attempted to kill D.B.; appellant's claim is the trial court erred by failing to give a written instruction on heat of passion as mitigation. "Generally, the intent to unlawfully kill constitutes malice [aforethought]." (*People v. Rios* (2000) 23 Cal.4th 450, 460.) That is, absent mitigation, the evidence supporting appellant's conviction for attempted murder on count 2 is undisputed.

On the other hand, even if there was substantial evidence (i.e., "evidence sufficient to 'deserve consideration by the jury' " (*People v. Williams* (1992) 4 Cal.4th 354, 361)) of heat of passion, the provocation evidence in this case was comparatively weak. Provocation and heat of passion as mitigation presuppose a defendant is less culpable than a murderer. As to this fact, there is little evidence to support that conclusion. Appellant was an adult; D.B. was a child. Appellant, using profanity, told D.B. to leave Davis's apartment and D.B. complied. D.B. retreated into Stanford's apartment and appellant and D.B. continued arguing from different apartments. Appellant then unilaterally escalated the conflict by challenging D.B. to come back outside; she responded. A person who provokes a fight cannot be heard to assert provocation by the victim existed such that a reasonable person in the defendant's position would lose judgment and kill. (*People v. Johnston* (2003) 113 Cal.App.4th 1299, 1312.)

Further, there is no dispute that moments after shooting D.B., appellant intended to murder Stanford. Evidence of that intent was highly probative of appellant's intent to murder D.B. (see *People v. Ewoldt* (1994) 7 Cal.4th 380, 402). Appellant's intent to murder D.B. is inconsistent with an intent to commit the voluntary manslaughter of D.B.

In sum, appellant's claim is the trial court erred by failing to give a written CALCRIM No. 603 instruction, but we conclude that when " 'the evidence' " (*Watson, supra,* 46 Cal.2d at p. 836), including the above two points, is considered along with " 'the entire cause' " (*ibid.*), including the factors discussed below, it is not reasonably probable a result more favorable to appellant would have occurred if the trial court had given CALCRIM No. 603 orally and in writing.

Considering " 'the entire cause' " (*Watson, supra,* 46 Cal.2d at p. 836), we are further persuaded that no prejudicial instructional error occurred. Appellant himself argued to the jury that he committed attempted voluntary manslaughter, not attempted murder. That is, appellant himself alerted the jury to the issue of whether he committed attempted voluntary manslaughter as a lesser offense of count 2; the jury did not hear about that issue only from the instruction orally given. (*Guiton, supra,* 4 Cal.4th at p. 1130.) In addition, as noted in *Trinh*, "[t]he jury received the requested instructions orally. We presume they heard and followed them." (*Trinh, supra,* 59 Cal.4th at p. 235.)

Moreover, the jury's note to the court (see fn. 5, *ante*)—asking for a more thorough explanation of attempted murder and attempted voluntary manslaughter—was withdrawn shortly after it was submitted. As it appears, further deliberations and the oral instruction on CALCRIM No. 603 were sufficient to allow the jury to deliberate to verdict. The jury did not expressly ask the court to give a written CALCRIM No. 603 instruction. (See Pen. Code, § 1093, subd. (f); *People v. Blakley* (1992) 6 Cal.App.4th 1019, 1024 [fact jury did not request rereading of instruction militated against conclusion statutory error of omitting written instruction was prejudicial].) And, the jury in the present case deliberated less than three hours, i.e., "the jury deliberations do not appear to have taken an unduly lengthy period of time" (*People v. Cooley* (1993) 14 Cal.App.4th 1394, 1400), a factor militating against a conclusion the statutory error here was prejudicial. (*Ibid.*; see *Seaton, supra,* 26 Cal.4th at p. 674 [fact jury deliberated only a day militated against prejudice from similar statutory error].)

Finally, in *People v. Wharton* (1991) 53 Cal.3d 522, the defendant claimed the trial court erroneously refused to give a defense-requested instruction on heat of passion.

(*Id.* at p. 569.) However, our Supreme Court observed in *Wharton* that the jury in that case, having been instructed on premeditation and deliberation, found the defendant guilty of first degree murder and thus necessarily found the defendant premeditated and deliberated the killing. (*Id*. at p. 572.) Our Supreme Court then stated, "[t]his state of mind, involving planning and deliberate action, is manifestly inconsistent with having acted under the heat of passion . . . and clearly demonstrates that defendant was not prejudiced by the failure to give his requested instruction." (*Ibid*.)

In the present case, the court, using CALCRIM No. 601, instructed the jury that the People had to prove beyond a reasonable doubt the premeditation and deliberation allegations pertaining to count 2. Unlike the case in *Wharton*, in the present case, the trial court in fact gave the requested instruction (here, CALCRIM No. 603), doing so orally. The jury's premeditation and deliberation finding as to count 2 in the present case demonstrates the trial court's failure to provide a written CALCRIM No. 603 instruction was not prejudicial. (Cf. *Wharton, supra,* 53 Cal.3d at p. 572; see *People v. Carasi* (2008) 44 Cal.4th 1263, 1306; *People v. Box* (2000) 23 Cal.4th 1153, 1171, 1213.) Nothing in the record establishes a reasonable probability of a more favorable outcome had the jury received a written copy of CALCRIM No. 603. No prejudicial error occurred. (Cf. *Trinh*, *supra,* 59 Cal.4th at p. 235; *Watson*, *supra,* 46 Cal.2d at p. 836.)[7]

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[7] In appellant's opening brief, in his analysis of the issue of whether the error here was prejudicial, appellant observes, "[t]he *Trinh* court stated that in *its* view the standard, where a court has inadvertently failed to provide a jury with a written instruction, is [the *Watson* standard]. (*People v. Trinh*, *supra*, 59 Cal.4th at p. 235.) However, *appellant* asserts that since this error deprived him of his due process rights under the Fourth, Fifth, and Fourteenth Amendments of the federal [C]onstitution to have the jury determine all factual issues pertaining to the charged offense [citations], the error here *should* be reviewed under the [harmless-beyond-a-reasonable-doubt] error standard of *Chapman v. California* (1967) 386 U.S. 18 . . . ." (Italics added.) We reject appellant's assertion because we previously have held no constitutional instructional error occurred and because we are bound to follow *Trinh* (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455). We reject appellant's Fourth Amendment reference for the additional reason the reference is perfunctory and unsupported by argument or authority. (Cf. *People v. Islas* (2012) 210 Cal.App.4th 116, 128.)

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

JONES, J.*

We concur:

EDMON, P. J.

LAVIN, J.

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.